H/7

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN

AT JODHPUR

..

:: **JUDGMENT** ::

Vijendra Singh Vs. Karim Bux & Ors.

S.B. CIVIL MISC. APPEAL NO.178/1993.

Against the award dated 19.11.1992 made by the Motor Accidents Claims Tribunal, Pali in Claim Case No.36/1987.

Date of Judgment ::: 03.08.2006.

PRESENT

HON'BLE MR.JUSTICE DINESH MAHESHWARI

Mr. B.M. Bhojak, for the appellant.
Mr. M.K. Garg, for the respondents No.1 to 4.
Mr. G. Vaishnava, for the respondent No.5.
Mr. Sanjay Mathur, for the applicant.

...

BY THE COURT:

The owner of the vehicle involved in the accident has preferred this appeal assailing the award dated 19.11.1992 made by the Motor Accidents Claims Tribunal, Pali in Claim Case No.36/1987 awarding an amount of Rs.3,60,000/- as compensation to the claimants on account of the accidental death of Chand Khan, 25 years in age.

The claimants submitted the claim application aforesaid with the averments that the deceased Chand Khan, engaged in milk vending, on 07.12.1986 while riding his motorcycle bearing registration No. RJT 5666 on Pali-Sojat Road had a companion motorcyclist Babu Khan riding other motorcycle bearing registration No. RJT 6979; and both of them were going to Suraita for fetching milk; a truck bearing registration No. RSQ 5391 was sought to be over-taken by both the motorcyclists and when the said truck provided them side and when Chand Khan was on the right hand side of the said truck, at that time, he was hit from behind by other truck bearing registration No. DIL 3224; Chand Khan fell down and was crushed by the said truck and he succumbed to the injuries on the spot. The claimants alleged that the deceased Chand Khan was not at all at fault and it was due to culpable negligence of the driver of truck DIL 3224 attempting to overtake an already overtaking vehicle that the deceased was hit and crushed and, therefore, the non-applicants, being the driver, owner and the insurer of the offending truck were liable for compensation.

For the purpose of quantification of compensation, the claimants alleged that the deceased was engaged in milk business and was contributing for maintenance of his family consisting of his father, brothers and

sisters and so also his own children. Stating his age at 25 years, the claimants sought compensation for pecuniary loss of Rs.3,75,000/- and adding up other losses, in total made the claim in the sum of Rs.4,18,000/-.

The non-applicant Nos. 1 and 2 while stating general denial of the claim averments, submitted that the accident was not caused by rash and negligent driving of the truck and in the alternative pleaded that the accident was caused for the deceased driving his motorcycle rashly and negligently. The insurer, non-applicant No.3 while stating a general denial, submitted that the vehicle was not being plied on a valid permit and the driver was not having valid driving licence and, therefore, the insurer was required to be exonerated of its liability.

On the pleadings of the parties, the following issues were framed by the Tribunal for determination of the questions involved in the claim case:

> "(1) आया दिनांक 7-12-86 को प्रात: 8 बजे या इसके लगभग सरहद पाली-सोजत सड़क पर अप्रार्थी संख्या 1 वाहन ट्रक डी0 आई 0 एल 0 3224 के चालक मुख्तयारसिंह ने ट्रक डी0 आई 0 एल 0 3224 को लापरवाही उपेक्षपूर्ण व द्रुतगति से चलाकर चांद खां के टक्कर मारी जिससे उसकी मृत्यु इस दुर्घटना में घटनास्थल पर हुई ? (प्रार्थी)
>
> (2) आया वाहन संख्या डी0 आई 0 एल 0 3224 का स्वामी अप्रार्थी संख्या 2 विजयेन्द्र सिंह था और उक्त वाहन अप्रार्थी संख्या 3 मैसर्स युनाईटेड इंडिया इन्श्योरेन्स कम्पनी लिमिटेड के यहां बीमित था ? (प्रार्थी)

(3) आया मृतक चांद खां की दुर्घटना के समय आयु लगभग 25 वर्ष थी और वह दूध के व्यवसाय से मासिक 1500/- रू० की आय प्राप्त करता था ?
(प्रार्थी)

(4) आया प्रार्थीगण मृतक चांद खां के उत्तराधिकारी हैं और वे अप्रार्थीगण से इस दुर्घटना में चांद खां की मृत्यु होने के फलस्वरूप मुआवजे की राशि माफिक क्लेम 4 लाख 18 हजार रूपये प्राप्त करने के अधिकारी हैं ? (प्रार्थी)

(5) आया वाहन संख्या डी0 आई 0 एल 0 3224 का वैधानिक परमिट नहीं होने से अप्रार्थी संख्या 3 क्लेम की राशि के लिये उत्तरदायी नहीं है ?
(अप्रार्थी सं03)

(6) आया उक्त वाहन के ड्राईवर के पास वैधानिक लाईसेन्स नहीं होने से अप्रार्थी संख्या 3 इस क्लेम की राशि के लिये उत्तरदायी नहीं है।
(अप्रार्थी सं03)

(7) अनुतोष ?"

In oral evidence, the claimants examined Karim Bux, claimant No.1, father of the deceased, as AW-1 and Babu Khan, an eye witness of the accident as AW-2, and produced relevant documentary evidence. The non-applicants submitted Insurance Certificate but no oral evidence was adduced by any of the non-applicants.

Taking up the issues involved in the case, the learned Judge of the Tribunal with reference to the testimony of Babu Khan AW-2 and the documentary evidence submitted by the claimants and for want of any evidence by the non-applicants, held on issue No.1 that the accident was caused

by rash and negligent driving of the offending truck by the non-applicant No.1 that resulted in the death of Chand Khan. In issue No.2 it was held with reference to the insurance certificate that the non-applicant No.3 was the insurer of the offending vehicle and the non-applicant No.2 was its owner. Issue Nos. 5 and 6 in relation to the plea for its exoneration were decided against the insurer for want of evidence.

Taking up quantification of compensation in issue Nos.3 and 4, the learned Judge found that the deceased was 25 years in age and was engaged in milk business where he was bringing substantial quantity of milk on his motorcycle and was selling the same and, therefore, held that an income of Rs.1500/- per month was obviously available to the deceased. The learned Judge was of opinion that the deceased was likely to contribute Rs.1000/- per month to the family and thereby adopted the multiplicand at Rs.12,000/- per annum and applied a multiplier of 30 with reference to the likely earning years of the deceased and hence arrived at a pecuniary loss figure of Rs.3,60,000/- and held the father and the children of the deceased entitled to receive this amount of compensation. No other component of loss was taken into consideration.

This appeal has been submitted by the owner of the offending vehicle questioning the award on its findings of negligence of the truck driver and on its assessment of

compensation. Learned counsel Mr. B.M. Bhojak appearing for the appellant has pressed the submissions that the Tribunal has erred in not considering negligence of the deceased and his liability towards the accident and has pointed out with reference to the site inspection report that the deceased was on the extreme right- hand side of the road and, therefore, contended that the accident was caused on account of his own negligence. Learned counsel in the alternative submitted that at any rate the contributory negligence of the deceased is apparent on the face of the record and, therefore, the finding on issue No.1 deserves modification. Learned counsel further submitted that the assessment of compensation by the Tribunal has not been on valid and correct principles and the Tribunal has erred in applying the multiplier of 30 to a multiplicand of Rs.12,000/- per annum. Learned counsel submitted that the Tribunal has erred even in taking the income of the deceased at Rs.1,500/- per month without any proof of income at all and there was no basis for which such income figure could have been adopted and at any rate application of multiplier of 30 cannot be countenanced.

Per contra, learned counsel Mr. M.K. Garg for the respondent-claimant has strenuously contended that though the Tribunal has applied a multiplier of 30 while assessing the pecuniary loss, the fact remains that the income of the

deceased has also been taken at a static figure of Rs.1500/- per month and no component of future prospects has been provided despite the fact that the deceased was only 25 years in age and was already earning Rs.1500/- per month by milk vending business. Learned counsel has referred to the decision of the Hon'ble Supreme Court in New India Assurance Co. Ltd. Vs. Kiran Singh & Ors.: 2004(2) AJR 395 (SC) to submit that if the multiplicand is enhanced and then the multiplier is reduced, the result would, more or less, remain the same and the pecuniary loss assessed by the Tribunal at Rs.3,60,000/- cannot be said to be excessive. Learned counsel also referred to the decision of this Court in Radha Devi Vs. Ramphool: 2006 (1) DNJ(Raj.) 301. In relation to the liability towards accident, learned counsel Mr. Garg submitted that in the undeniable fact situation of the present case, it is apparent that the deceased motorcyclist was already in the process of overtaking another truck when he was hit by the offending truck from behind that shows total fault only and exclusively on the part of the non-applicant truck driver and no contribution to the accident could be imputed upon the deceased. Learned counsel further submitted that the Tribunal has not awarded anything towards non-pecuniary loss and in the overall analysis the impugned award cannot be said to be excessive so as to warrant interference in this appeal

preferred by the owner of the offending vehicle.

Learned counsel for the appellant Mr. Bhojak rejoined with the submissions that even if the truck driver could be said to be liable towards accident on the principles of contributory negligence yet, for the very fact that the deceased motorcyclist was on the extreme right hand side of the road and was in the process of over-taking another truck, his equal contribution to the accident is apparent and, therefore, even if any liability is fastened on the truck driver for accident, it cannot stand beyond 50%. On the quantum of compensation, learned counsel Mr. Bhojak distinguished the cases cited by Mr. Garg with the submissions that the principles applicable for a person in a settled employment and having salary income with definite chances of future enhancement cannot be applied to a case of the present nature where the deceased was not in any settled job or employment but has been shown earning his livelihood by selling milk and the factor of uncertainty looms rather large on such kind of income sources and, therefore, the Tribunal could not have adopted any figure higher than the alleged last income of the deceased as the basis for estimating the income; and in fact even such estimation in the present case remains rather on the higher side when no definite proof of income has been adduced. Learned counsel while relying on

the decision of the Hon'ble Supreme Court in U.P. State Road Transport Corporation & Ors. Vs. Trilok Chandra & Ors.: 1 (1996) ACC 592 (SC) has submitted that the principles of law remain that in assessment of compensation, the highest multiplier could be 18 and not beyond and even in the case of Kiran Singh (supra), the Hon'ble Supreme Court has not countenanced the multiplier of 43 and the award has been upheld for the reason that on reduction of the multiplier and enhancement of the multiplicand the result would remain the same and more particularly for the reason that the said one was an appeal by the insurer where the Hon'ble Supreme Court observed that the insurer is not capable of challenging the quantum of compensation.

It may be pointed out that an application has been submitted in this case on behalf of the wife of the deceased to get herself impleaded in this appeal and the application has been kept pending for disposal at the final hearing of the appeal. However, having regard to the nature of award made in this case where nevertheless 3/4th of the award amount has been apportioned for the children of the deceased, i.e. the children of the applicant Smt. Chand Bibi, learned counsel Mr. Sanjay Mathur appearing for the applicant submitted that the applicant shall stand advised not to press this application and urged that the appeal may be decided on its merits.

Learned counsel Mr. G. Vaishnava appearing for the Insurer submitted that so far the insurer is concerned, its liability is limited at Rs.1,50,000/- as already concluded by this Court in S.B. Civil Misc. Appeal No. 21/1993 (United India Insurance Co. Ltd. Vs. Karim Bux & Ors.) decided on 27.07.1993. In the said appeal, this Court has found the liability of the insurer to be limited at Rs.1,50,000/- and of course the present appeal has been left to be decided on merits. This Court has held,-

> "In the result, appeal succeeds and is allowed to the extent that the liability of the appellant is fixed at Rs.1,50,000/- with interest on this sum at the rate awarded by the Tribunal. However, it is made clear that any amount deposited by appellant in pursuance of the order dt. 5.2.93 shall not be refundable and the same shall be paid to the claimant. That was the course adopted by their Lordships on Supreme Court in aforesaid decision.
>
> It is further made clear that decision of this appeal shall not affect the merits of the appeal which is stated to have been filed by the owners of the vehicle challenging quantum of compensation awarded to the claimants and that will be decided on its own merit."

Having heard learned counsel for the parties at length and having examined the impugned award and the record of the case, this Court is satisfied that the impugned award on its quantification of compensation in the sum of Rs.

3,60,000/- with the rate of interest at 12% per annum from the date of filing of the claim application remains excessive than the amount of just compensation; and the award deserves suitable modification.

So far the aspect of contributory negligence is concerned, having examined the evidence as placed on record and having considered the effect of omission on the part of the non-applicants to produce relevant evidence, this Court is satisfied that the Tribunal has not committed any error in deciding issue No.1 against the non-applicants and in finding the accident to have occurred for rash and negligent driving of the truck by the non-applicant No.1 and the liability towards the accident remains exclusively that of the truck driver. The entire incident has been narrated in meticulous details by the eye-witness Babu Khan AW-2 who was a companion of the deceased at the time accident riding another motorcycle and he has categorically stated that when both of them were in the process of over-taking other truck after having been provided side for such over-taking, the deceased Chand Khan was hit from behind by the offending vehicle and was crushed beneath. Learned counsel Mr. Bhojak for the appellant has submitted that a reference to the site inspection report Ex.3 makes it clear that the deceased was on the extreme right hand side of the road and, therefore, his

contribution to the accident is apparent. The submission of learned counsel would have been of some substance had it been a case of head-on collision with the offending truck coming from the other side, i.e. opposite direction of the road, and the deceased motorcyclist might have been held responsible for having intruded into the wrong side lane of the road inviting danger from on-coming traffic. However, the fact in the present case remains that the offending truck hit the deceased from behind and not from the front. The scenario available from the statements of AW-2 Babu Khan, an eyewitness to the accident, and the site inspection report Ex.3 is that the deceased while riding his motorcycle was in the process of over-taking another vehicle and had obviously come out of his lane. But then, the offending truck driver who was following the said motorcycle was definitely in a position to view the entire traffic on the road ahead; and was required to be conscious of that the fact that ahead of him a two-wheeler is in the process of over-taking another tuck and has already come out of the lane. If the offending truck was being driven with only simple reasonable care and caution, the offending truck could never have hit the motorcyclist from behind; instead, it would have either stayed in its lane or, at the most followed the tail of the motorcycle. The fact that the offending truck hit the deceased from behind at the right-hand

side of the road shows it clearly that the offending truck itself had severed too much to the wrong lane; and may be, the truck driver was himself more eager to over-take and in this process took toll on the life of the motorcyclist. That the offending truck was at a very high speed is amply established by the fact that it came to halt after covering a long distance of about 85 feet from his point of incident. Having examined the site inspection report, this Court is satisfied that no contribution to the accident could be attributed to the deceased. Other significant aspect of the present case remains that the truck driver, non-applicant No.1 has not been produced in evidence who could have been the best person to rebut the evidence adduced by the claimants. For non-production of the driver of the offending truck, an adverse inference is definitely required to be drawn against the non-applicants and the resultant position with reference to the evidence as placed on record and as omitted to be placed is that the accident is obviously required to be attributed to the sole negligence and fault of the truck driver. Issue No.1 has rightly been decided in favour of the claimants and such finding calls for no interference.

However, so far the process of quantification of compensation is concerned, the considerations adopted by the Tribunal fall too short of correctness and relevance. The

Tribunal has proceeded to accept the income of the deceased at Rs.1500/- per month and after deducing the usual one-third for personal expenditure, has taken his monthly contribution at Rs.1000/- per month and in this way adopting a multiplicand of Rs.12,000/- per annum has proceeded to multiply by 30 with reference to the remaining expected earning years of the deceased and thereby has arrived at a figure of Rs.3,60,000/- for pecuniary loss and at the same time has not awarded any amount towards non-pecuniary loss and towards funeral expenses. The process of quantification of compensation having been totally irrational, the entire award deserves to be modified.

Learned counsel Mr. Garg has strenuously contended that the Tribunal has not provided for the future prospects for the deceased that ought to have been taken into consideration and if the multiplier is even reduced to half and the annual loss of contribution is doubled, in view of the age of the deceased at 25 years only, the resultant position would remain the same and, therefore, the impugned award calls for no interference. The submissions are not well founded. The deceased was not in any settled employment or job and was not earning any definite salary or any other settled income with reasonable certainty of chances of future enhancement. He was not engaged even in a settled business. In such cases

of self-employment, the uncertainties are larger in operation and, therefore, ordinarily in such cases only the last known income could be taken as the relevant base figure and the component of future prospects as such cannot be applied. Moreover, the deceased has been shown engaged in a business of procuring milk and then selling the same; and in such kind of business, the earning cannot remain static at Rs.1500/- per month and consequently the contribution would also vary. Viewed from any angle, taking last known one as average income appears reasonable. Though the contention of the claimants for increase in the income on future prospects is not accepted but at the same time the submissions of the appellant that the income even at Rs.1500/- per month has not been proved does not carry weight. The deceased has been shown engaged in milk business and in fact was going to fetch milk carrying five milk drums when he met with the fatal accident. A monthly income of Rs.1500/- per month in the year 1986 from such milk vending cannot be said to be exaggerated and there is no reason not to accept even that much of minimal earning.

The fact in the present case remains that the deceased was 25 years in age and it has been pointed out in evidence that he was already earning for last eight years. The deceased was also having three children and was contributing

to his father as well. In such circumstances, this Court is of opinion that even if a component of future prospects as such is not provided and his average income is taken at Rs.1500/- per month, for the purpose of multiplicand, it shall be appropriate that instead of deducting one-third for the personal expenditure of the deceased, the deduction be made only at about one-fourth of income and instead of deducting Rs.500/- from the average income, Rs.375/- may be deducted to take an average contribution at Rs.1125/- per month. The father of the deceased has also pointed in his cross-examination that the personal expenditure of the deceased Chand Khan was about Rs.250/- only and in the context of the entire family set-up and with reference to the aforesaid statement of the father of the deceased, it appears appropriate to deduct one-fourth from the average income and to take the multiplicand at Rs.13,500/- per annum in place of Rs.12,000/- per annum as estimated by the Tribunal.

So far application of multiplier is concerned, for a victim in the age group of 25 to 30 years, the multiplier of 18 is provided under Second Schedule to the Motor Vehicles Act, 1988 and having regard to the family set-up and the overall fact situation of the present case, it appears appropriate to apply a multiplier of 18 to the multiplicand of Rs.13,500/- that leads to the pecuniary loss at Rs. 2,43,000/-. The deceased

has left behind his father and three children and it has not been disputed that the deceased had left behind his wife also though she did not join as a claimant for the then existing family disputes. However, it has been pointed out that now the disputes have, more or less, been settled between the parties. Having regard to the family set-up, this Court is of opinion that though the wife of the deceased has not joined as a claimant, reasonable component deserves to be provided for her too while allowing non-pecuniary loss. Having regard to the overall circumstances including the very young age of the deceased at 25 years; the age of the claimants including three minor children; the deceased having left two brothers who joined as claimants but were not allowed any compensation; and the wife who did not join the claim application, interest of justice shall meet if non-pecuniary loss be allowed at a comparatively higher figure. In the over all circumstances, this Court is of opinion that non-pecuniary loss be allowed to the father of the deceased at Rs.10,000/- and similar amount in the sum of Rs.10,000/- each be allowed to the children of the deceased. Therefore, the non-pecuniary loss deserves to be allowed at Rs.40,000/- in the present case. Another sum of Rs.5,000/- deserves to be allowed towards funeral expenses, leading to total compensation in the sum of Rs.2,88,000/- (Rs.2,43,000/- + Rs. 40,000/- + Rs.5,000/-).

Having regard to the circumstances of the case, in view of the award made in the year 1992, and in view of reduction in the amount of award being made herein, the rate of interest at 12% per annum is not interfered with.

As a result of the aforesaid, this appeal is partly allowed and the award of compensation in the sum of Rs.3,60,000/- is modified and, instead, the claimants are allowed compensation in the sum of Rs.2,88,000/- with interest at the rate of 12% per annum from the date of filing of claim application. Any amount if due to be paid shall be deposited by the appellant with the Tribunal within 30 days from today. Upon deposit, the Tribunal shall carry out apportionment and disbursement of the amount in the manner and proportion as contemplated under the impugned award.

The parties shall bear their own costs of this appeal.

(DINESH MAHESHWARI), J.

//Mohan//